

IN THE HIGH COURT OF JUDICATURE AT BOMBAY							
CIVIL				APPELLATE		SIDE	
LETTERS	PARENT	APPEAL	NO.	251	OF	2000	
1.	Singh	Jagannath	Singh	S/o.			Bindeshwari (Deceased).
1A.	Arjun	Jagannath	Singh				(Deceased)
1Aa.		Mahendrakumar	Arjun				Singh,
1Ab.		Hiravatidevi	Arjun				Singh
1b.		Sarjuprasad	Singh				(deceased)
1ba.		Birendraprasad	Saryuprasad				Singh,
1bb.		Devendraprasad	Saryuprasad				Singh,
1c.		Prabhu	Narayan				Singh,
1d.			Keshavprasad				Singh,
1e.			Fulgan				Singh,
1f.			Shivprasad				Singh,
2.		Mangalasingh	S/o.		Bindeshwari		Singh
	(deceased).						
2a.		Krishnaprasad	Singh	s/o.	Mangala		singh.
2b.		Shivshevak	s/o.		Mangala		Singh,
2c.		Udaynath	Singh	s/o.	Mangala		singh
2a	to	2c,	residing	at	village		&
Post		Naiya,		Dist.			Varanasi,
	Uttarpradesh.						
3.		Fauzdarsingh	s/o.		Bhagavati		Singh
	(deceased)						
3a.		Ramshankar			Bhagvati		Singh
	(deceased).						
3aa.		Shivprasad	Ramshankar				Singh,
3ab.		Shivgopal	Ramashankar				Singh,
3b.			Chhabinath				Bhagwatisingh.
4.		Sakalnarayan	Singh				Sitalaprasad
	Singh,						
	Appellants	having	their		place		of
	work	at	Fort	Cold	Drink		House,
	11-G,	Sharda	Sadan,		S.A.		Brailvi
	Road,	Fort,	Bombay	400	001.	..	Appellants
Versus							
1.		Kamlesh	S/o.				Awadhnarayan
2.		Harishchandra	S/o.				Awadhnarayan
3.		Umeshsingh	S/o.				Awadhnarayan
4.		Rajeshsingh	S/o.				Awadhnarayan
5.		Ashoksingh	S/o.				Awadhnarayan
6.		Rameshsingh	S/o.				Awadhnarayan

7.		Rakeshsingh	S/o.	Awadhnarayan
8.		Subhashsingh	S/o.	Awadhnarayan
	(deceased)			
8a.		Pushpa	Subhash	Singh,
8b.		Hariom	Subhash	Singh,
8c.		Kalyani	Subhash	Singh,
8d.		Saurab	Subhash	Singh.

Respondent	Nos.	1	to	8(a)	to	8(d)
having	their		address	at		B:aijnath
Cold	DrinkHouse,		4,	Nanabhai		Lane,
Fort,	Bombay	400	001	and	also	their
native	place	in	U.P.	in	village	and
Post	Nahiyen.			District		Varanasi,
Uttar Pradesh.				...Respondents		

Mr.U.S.R.		Singh	for	Appellants.
Mr.	Suresh	Gole	for	Respondents.
		CORAM	:	F.I. REBELLO &
			ANOOP	V. MOHTA,JJ.
		DATED	:	SEPTEMBER 03, 2004
ORAL	JUDGMENT	(Per	F.I.	Rebello,J.):

1. This Letters Patent Appeal is directed against the judgement dated 28.6.2000 in First Appeal No.1001 of 1996 in S.C. Suit No. 6403 of 1979. This was the suit filed by the Respondent herein against the appellants for specific performance of the agreement of sale dated 15.3.1971 and the consequential mandatory order to sign all documents as required in terms of Prayer Clause (a) and in the alternative prayer Clause (b). This suit came to be dismissed by the trial court on 14.6.1996.

The Respondent herein preferred an appeal which was numbered as First Appeal No. 1001 of 1996. The learned Single Judge was pleased to allow the appeal for the reasons set out in Paragraph Nos. 14, 15, 16 and 18 of the judgment. It is this order which is subject matter of the present

Letters Patent Appeal.

2. On behalf of the appellant, their learned counsel contends that the learned court misdirected itself in law in allowing the appeal and setting aside the order of the trial court and remanding the matter back to the trial court in terms of the directions issued. It is pointed out that the respondent herein though they were aware of the stand of the appellant disputing the signatures on the document and in the alternative disputing the contents of the document did not led any evidence in support of the signatures on the document or the genuineness of the document sought to be specifically performed. On the contrary in the evidence before the trial court the only witness examined on behalf of the respondent namely Kamlesh Singh specifically stated that he was not examining any other witness on behalf of the respondent (Plaintiff). It is further submitted that the

application to examine handwriting expert was only made after the evidence was closed. Nothing had prevented the respondent from examining handwriting expert as their witness. After the order was passed in First Appeal, at an interim stage, directing the documents be sent to handwriting expert, the report was received which does not support the case of the Respondent. Even if the expert was examined, this expert supports the case of the appellants and at the highest if he was allowed to be cross examined, his evidence will have to be rejected and the court will have to proceed on the other evidence as before it. The learned First Appellant Court further misdirected itself in directing that if the handwriting expert was not available, then the learned Judge ought to appoint another Government Experts from the panel available to him. It is further pointed out that the direction issued by the First Appellant Court in Paragraph 13 could not have been given as the relief could not have been granted based only on the opinion of the handwriting expert but bearing in mind the entire evidence on record. For all aforesaid reasons, the learned counsel contends that the appeal should be allowed. The order of the First Appellant Court be set aside and the

order of the trial court be restored.

. On the other hand on behalf of the Respondents, their learned counsel contends that as the appellants herein in their written statement had taken inconsistent stands, they were not be in a position to decide whether to examine any other witness including expert wittiness. It is in these circumstances that the witness was not examined. At any rate it is pointed out if this court comes to the conclusion that the order directing appointment of the handwriting expert cannot be sustained then the matter will have to be remanded back to the First Appellant Court to decide the matter on merits and on evidence which exercise was not done by the First Appellate Court.

3. It is in these circumstances, that we are called upon to decide the present L.P.A. It is settled law that the party seeking specific performance of the agreement has to discharge the burden of proving in the event the signature or writing are disputed, to discharge the initial burden that the signature are that of the parties who have signed and that the contents of the document is genuine. In the instant case, the plea

by the appellants herein in their written statement before the trial court was firstly that their signatures on the agreement were not their signatures and in the alternative if the court came to the conclusion that the signatures were those of the appellants herein, then it was explained that the blank papers bearing signatures of the defendants taken for another purpose were used to prepare the forged document. It was explained that in respect of checkbandi proceedings of lands in native place some times those defendants signatures used to be taken on blank papers and the same might have been used to forge the said alleged agreement of sale. The appellants in support of their contentions had examined as witness one of the defendants who was alive who is supposed to have signed the agreement but denied the signatures thereon as also another witness who had signed as witness had denied his signature on the said document. This was the nature of evidence before the trial court. Nothing prevented the respondents herein to have got examined the disputed document which was in their custody for opinion of the handwriting expert and produce that expert as their witness. This was not done by the appellants. The courts on occasions may require opinion of the

expert if on the evidence available it is not possible for the court to construe the document or the same requires some explanation. The First Appellate court at interim stage did allow the application for examining the expert. That opinion was available to the First Appellate Court. That opinion prima facie was against respondent herein. The direction to examine expert before the trial court can only be to support the report of the expert. In the instant case, the report was against respondent. Therefore, at the highest the expert witness could have been examined only to discredit his expert opinion. In other words to reject that opinion. This was futile exercise as that would no way support the case of the respondents. Independently there was no question even if the said expert witness was not available to direct sending the document again to another expert to get fresh opinion. In our opinion this was totally without jurisdiction.

. It may be pointed out that on behalf of the appellant herein their learned counsel had relied on the judgment of the Division Bench of Madras High Court in the case of Arasappa Pillai Versus Manika Mudaliar AIR 1915 Madras 68 to contend that

when the party before the trial court has made solemn statement that he does not wish to examine witness, then the appellate court has no power to call for fresh evidence under Rule 27 of Order 41 as it then stood. We are in agreement with the contention advanced on behalf of the learned counsel for the appellant that on the facts of the present case, there was no question of the court suo moto directing examination of any expert.

4. The other aspect of the matter are the directions issued in terms of Paragraph 18 of the judgement. The first Appellate Court could not have issued the direction as set out therein to direct the trial court to dispose of the suit in terms of the opinion of the expert. The opinion of the expert would only be in addition to the evidence on record. Really therefore, direction issued by the learned Judge in Paragraph 18 will have to be set aside.

5. We are of the opinion that on the facts and circumstances the order of the First Appellate Court will have to be set aside for the following reasons :

(1) The Respondent/Plaintiff on whom duty was cast to prove genuineness of the document and the signatures did not chose on their own to examine any handwriting expert and prove the same.

(2) The application to examine expert was made after the evidence has been closed. In other words at a belated stage.

(3) The Appellant had examined one of the signatory who had deposited that signature on the document was not his document as also an identifying witness who had similarly deposited.

(4) After the opinion had been obtained and prima facie opinion did not favour the respondents, there was no question of remanding the matter back for cross examining the said expert as in that event it is only to discredit the opinion of the expert as otherwise the opinion of the expert was in favour of the appellants herein.

(5) There was no question of the First Appellate Court directing appointment of another expert in the face of the prima facie opinion which was available to it.

(6) Lastly the direction issued for disposing of the suit could not have been issued. The trial court is bound in civil case to dispose of the suit based on preponderances of possibilities.

5. For all the aforesaid reasons, appeal will have to be allowed and the order of the First Appellate Court will have to be set aside. We are however, of the opinion that this cannot result straightway in restoring the order of the trial court. The submission made on behalf of respondents by their learned counsel that the matter was not examined on merits and on evidence before the trial court is right. The First Appellate Court is bound to examine witness and pass orders according to law.

6. Appeal is allowed. The matter is remanded back to the learned First Appellate Court. As the suit itself is of the year 1979, The first Appellate

Court is requested to dispose of the appeal as far as possible within three months from today. No order as to costs.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)